

HR 12471

File

leg file
plc 74-1866/a
plc 74-1899
27 AUG 1974

OGC Has Reviewed

MEMORANDUM FOR: Associate General Counsel

SUBJECT : Conferees' Action on Freedom of Information Amendments


REFERENCE : 21 August 1974 Memo to OLC Subject: Same

1. In connection with a statement to you by Gene Malmberg of State concerning the Agency's position on the Freedom of Information Act amendments now pending in Conference, we are attaching an excerpt from our Journal covering my conversation with Jim Kronfeld making it clear that indeed the Agency was not satisfied with the provisions and that we are already back to our third fall-back position.

2. To make sure there is no confusion on this matter, today I called Bill Phillips repeating what I had said to Kronfeld. Phillips said he understands we are not jumping for joy over the legislation but he feels we probably are not in a vale of tears either. I told him this was not so based upon our experience in court so far and that we would much prefer specific statutory recognition of a presumption favoring an affidavit by the Director which would have been the case under the Senate Committee version of the legislation in the in camera court procedure provision.

3. Phillips maintains that the most recent case involving President Nixon has extensive obiter dicta to the point that the courts would give such a presumption to protect Intelligence Sources and Methods Information. Moreover, Phillips maintains that the case law is that in such a case the President would be successful in exercising executive privilege.

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Deputy Legislative Counsel

Att

16 Aug 74 item 5
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OLC:LLM:JMD:kkh (27 Aug 74)

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OGC 74-1472

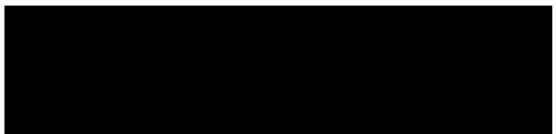
21 August 1974

MEMORANDUM FOR: Legislative Counsel

SUBJECT : Conferees' Action on Freedom
of Information Amendments

At the Interagency Classification Review Committee meeting this morning, Gene Malmborg of State reported that, at the Friday meeting of Administration representatives with the staffs of the Conferees, Bill Phillips said that CIA was satisfied with the provisions of the bill which have to do with judicial review. This seems to mean that we are understood as being satisfied with the provision that the court, upon review, may, in effect, substitute its own judgment on the question of whether or not the information at issue may be classified.

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Associate General Counsel